

James E. Steele, a Sole Proprietor, d/b/a Reddi Electric and Local 252, International Brotherhood of Electrical Workers, AFL-CIO. Case 7-CA-31968

December 31, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

Upon a charge filed by the Union on June 11, 1991, the General Counsel of the National Labor Relations Board issued a complaint against Reddi Electric, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On November 1, 1991, the General Counsel filed a Motion for Default Summary Judgment. On November 5, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Complaint shall be deemed to be admitted true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the regional attorney for Region 7, by letter dated August 15, 1991, notified the Respondent that unless an answer was received immediately, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a sole proprietor in business as an electrical contractor, maintains an office and

place of business at its facility in Inkster, Michigan. Since March 28, 1987, the Respondent has authorized the Ann Arbor Division, Michigan Chapter, National Electrical Contractors Association (the Association), to serve as its collective-bargaining representative for all matters contained in or pertaining to the Inside Wireman contract in effect between the Association and the Union. Employer-members of the Association annually realize gross revenues in excess of \$500,000 and purchase and receive goods and materials valued in excess of \$50,000, from suppliers located outside the State of Michigan. We find that the Respondent, by virtue of its authorization of the Association to serve as its collective-bargaining representative, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On March 28, 1987, the Respondent entered into a letter of assent with the Union authorizing the Association to serve as its collective-bargaining representative. It has thereby recognized the Union since that date as the designated exclusive collective-bargaining representative, within the meaning of Section 8(f) of the Act, of employees in a unit consisting of all employees who perform work described in article II, section 2.09(a), of the current Inside Wireman contract effective from June 1, 1990, to June 1, 1992, and has been a party to that and previous collective-bargaining agreements between the Association and the Union.

Between December 12, 1990, and February 12, 1991, while the Respondent performed electrical work in Ann Arbor, Michigan, for Beresh & Reidel, Inc., a general contractor, the Respondent unilaterally modified the current Inside Wireman contract by, inter alia, failing to pay contractual wages, failing to make the contractually required fringe benefit contributions for employees, and failing to comply with the referral procedures of the contract. We find, based on the above, that the Respondent has violated Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By failing to pay contractual wages, failing to make contractually required fringe benefit contributions for employees, and failing to comply with the referral procedures of the Inside Wireman contract, the Respondent has unilaterally modified that contract and has thereby engaged in unfair labor practices affecting commerce within the meaning

of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to abide by the terms of the 1990-1992 collective-bargaining agreement with the Union, including, inter alia, to pay contractual wages and contractually required fringe benefit contributions and to make all contributions to fringe benefit funds that have not been paid that would have been paid but for the Respondent's unlawful refusal,¹ as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn.2 (1980), enf'd. 661 F.2d 940 (9th Cir. 1981), the amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

We shall order the Respondent to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit for the term of the 1990-1992 Inside Wireman contract regarding wages, hours, and other terms and conditions of employment.²

ORDER

The National Labor Relations Board orders that the Respondent, James E. Steele, a sole proprietor, d/b/a Reddi Electric, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to abide by all terms and conditions of employment set forth in the Inside Wireman contract with the Union, including, inter alia, failure to pay contractual wages to employees, failure to tender fringe benefit contributions, and failure to follow referral procedures set forth in the contract.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

¹ Any additional amounts applicable to delinquent payments shall be paid in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

² To remedy the violation that the Respondent has failed to comply with referral procedures set forth in the contract, we leave to compliance the determination of the extent of the relief, if any, that is appropriate beyond the requirement that the Respondent cease and desist from failing to comply with these procedures and its affirmative corollary.

(a) Give full force and effect to the terms and conditions of employment set forth in the 1990-1992 Inside Wireman contract by, inter alia, paying contractual wages, tendering all contractually required fringe benefit contributions, following referral procedures set forth in the contract, and making any bargaining unit employees adversely affected by the actions found unlawful whole for any loss suffered as a result of those actions in the manner set forth in the remedy section of this decision.

(b) On request, bargain in good faith with the Union as the collective-bargaining representative of the employees in the unit for the term of the 1990-1992 Inside Wireman contract regarding wages, hours, and other terms and conditions of employment.

(c) Preserve and, on request, make available to agents of the National Labor Relations Board, for examination and copying, all records that are needed to analyze and determine the amounts of money due under the terms of the Board's Order.

(d) Post at its facility in Inkster, Michigan, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 252, International Brotherhood of Electrical Workers, AFL-CIO by failing and refusing, for the term of

the 1990-1992 Inside Wireman contract, to pay contractual wages, tender contractually required fringe benefit contributions on behalf of bargaining unit employees, or follow referral procedures set forth in the current Inside Wireman contract.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make our unit employees whole for any loss of earnings and other benefits resulting

from our failure to pay contractual wages under the 1990-1992 Inside Wireman contract, and WE WILL tender any delinquent fringe benefit fund contributions required under the contract and reimburse our unit employees for any expenses ensuing from the failure to make those payments.

JAMES E. STEELE, A SOLE PROPRIETOR, D/B/A REDDI ELECTRIC